



June 22, 2004

EXPEDITED ACTION REQUESTED

VIA E-FILING, FAX & UPS OVERNIGHT DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

**Re: Docket No. AB-33 (Sub-No. 132X), Union Pacific Railroad
Company - Abandonment Exemption - In Rio Grande
and Mineral Counties, CO**

Dear Mr. Williams:

This refers to the "City of Creede Reply In Support of All Filings Made In This Proceeding by D&RGHF" dated June 21, 2004, filed on the eve of the Board's June 22 voting conference.

Contrary to the City's latest filing, this case is not about the "credibility" of D&RGHF or of Don Shank, D&RGHF's President. It's about the finality of the Board's OFA process. The simple facts are (1) on May 11, 1999, the Board found two offerers, including D&RGHF, to be financially responsible, (2) UP negotiated in good faith with D&RGHF and reached an agreement on an OFA sale, and (3) the sale closed May 24, 2000 -- over four years ago.

The City is now seeking to force both D&RGHF and UP to unwind the OFA sale, primarily because of misrepresentations D&RGHF supposedly made with respect to its financial responsibility in 1999. We addressed this issue in our January 19, 2004 Reply and showed that the relief Creede was seeking was not even available.¹

There is a much more fundamental issue at stake here than just the D&RGHF OFA sale. If the Board were to order the Creede OFA sale to be undone at this late date, then no selling railroad would even be able to rely on the finality of an OFA sale. If this sale can be undone because of "financial responsibility" issues four years after the sale, then why not ten or twenty years later? Further, if the Board is going to

¹ The only relief available to the City at this late date is an adverse abandonment UP Reply, pp. 7-10.

Law Department

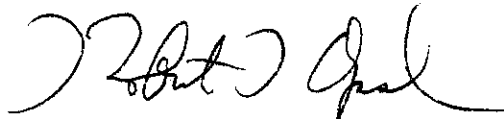
UNION PACIFIC RAILROAD
1416 Dodge Street, Rm. 830, Omaha, NE 68179-0001
fx: (402) 271-5610

subject the selling railroad to such a risk, how can it do that without demanding audited financial statements from every entity proposing to file an OFA and giving the selling railroad (and others) an opportunity to contest the offeror's showing before requiring the railroad to negotiate with the offeror, or setting the terms of an OFA? 2

For the reasons stated above and in UP's January 19 Reply, the Board should deny the City's request to unwind the May 24, 2000 OFA sale.

The original and 10 copies of this letter are sent by UPS Overnight for the Board's files.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert T. Opal", written in a cursive style.

Robert T. Opal
General Commerce Counsel
Direct dial: 402/271-3072
Fax: 402/271-5610

Enclosures

cc: (w/enc)
Parties Shown on Certificate of Service

2 At least D&RGHF submitted financial information to UP. The second offeror - RG&SJ - which the Board also found financially responsible in its decision served May 11, 1999 - submitted all of its financial information under seal, and never gave UP a copy.

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing document upon the persons shown below. Service was made by fax.

George M. Allen, Esq.
206-A Society Drive
Telluride CO 81435
Fax: 970-369-1009

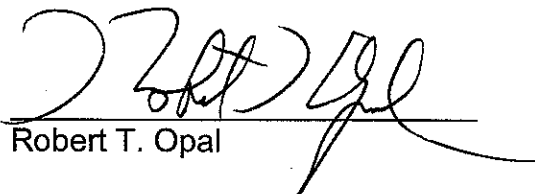
Raymond P. Micklewright, Esq.
Wolf & Slatkin
44 Cook Street
Suite 1000
Denver CO 80206-5827
Fax: 303-329-6826

Thomas F. McFarland, Esq.
208 South LaSalle Street
Suite 1890
Chicago IL 60604
Fax: 312-201-9695

Karl Morrell, Esq.,
Ball Janik LLP
1455 F Street
Suite 225
Washington D.C. 20005
Fax: 202-783-6947

Hon. B. J. Meyers
Mayor, City of Creede
P.O. Box 457
Creede CO 81130
Fax: 719-658-2017

Dated at Omaha, Nebraska this 22nd day of June, 2004.


Robert T. Opal